Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER BROWN**
(Mailed 2/7/02)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

(See Appendix C for List of Appearances)

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OPINION DETERMINING THAT DIRECT ACCESS SHOULD BE SUSPENDED AS OF SEPTEMBER 20, 2001, AND IMPLEMENTING THE SUSPENSION

I. Summary and Background

In 1995, this Commission issued a comprehensive decision for electric restructuring, which included the adoption and implementation of a direct access program. (Re Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation [Decision (D.) 95-12-063, as modified by D.96-01-009] (1995) 64 Cal. P.U.C.2d 1, 24 (Preferred Policy Decision).) The Legislature codified the Preferred Policy Decision in Assembly Bill No. 1890, Stats. 1996, ch. 854.

By "direct access" California customers are permitted to choose from whom they wished to purchase their electricity. Customers could subscribe to bundled service from the public utility or direct access service from an electric service provider (ESP). Customers who purchase bundled service from the utility pay an electricity charge to cover the utility's power supply costs. For those bundled service customers, their total bundled bill includes charges for all utility services, including distribution and transmission as well as electricity. A direct access customer receives distribution and transmission service from the utility, but purchases electricity from its ESP. (See D.01-09-060, p. 2.)

Recently, major events in the California electric market have caused a significant change in the area of direct access. On January 17, 2001, the Governor issued a proclamation declaring that an emergency existed in the electricity market in California, and stating that "the solvency of California's major public utilities" was threatened. In response to this emergency, the Legislature enacted Assembly Bill No. 1, First Extraordinary Session (AB1X), which, among other

things, required that the California Department of Water Resources (DWR) procure electricity on behalf of the customers of the California utilities. With respect to direct access, AB1X added Water Code § 80110,[1] which provides:

> "After the passage of such period of time after the effective date of this section as shall be determined by the commission, the right of retail end use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be suspended until the department [the Department of Water Resources] no longer supplies power hereunder." (Water Code, §80110 see also, AB1X, Stats. 2001 (1st Extraordinary Sess.), ch. 4, § 4, p. 10.)

AB1X was an urgency statute and was given effect as of February 1, 2001. The statute was necessary "to address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, that endanger the health, welfare, and safety of the people of [California]." (AB1X, Stats. 2001 (1st Extraordinary Sess.), ch. 4, §7, p. 16.)

In compliance with the mandate concerning direct access in AB1X, we issued D.01-09-060, an interim order, effective September 20, 2001, which suspended the right to enter into new contracts or agreements for direct access after September 20, 2001. We reserved for subsequent consideration matters related to the effect to be given to contracts executed or agreements entered into on or before the effective date. We especially put all parties on notice "that we may modify this order to include the suspension of all direct access contracts

[1] All Water Code sections cited in this decision are collected in Appendix B.

executed or agreements entered into on or after July 1, 2001." (D.01-09-060, pp. 8-9.) We acted promptly in issuing D.01-09-060 to prevent the adverse cost-shifting impacts on bundled service customers caused by customers switching to direct access. (D.01-09-060, pp. 8-10.) Also, D.01-09-060 was issued to facilitate the transactions of the State of California, in the issuance of bonds at investment grade necessary to ensure the repayment of the expenditures made from the State's General Fund to procure power for the utilities' customers. These expenditures were made to help weather the energy crisis confronting California. (D.01-09-060, pp. 4, 8.)

In D.01-09-060, we specifically reserved for a subsequent decision any issues related to an earlier suspension date. As we said: "All other pending issues concerning direct access contracts or agreements executed before today remain under consideration by the Commission and will be resolved in a subsequent decision." (D.01-09-060, pp. 8, 9.) We concluded that "[t]he effect to be given to contracts executed, agreements entered into or arrangements made for direct access [on or] before [September 20, 2001], including renewals of such contracts, as well as comments of the parties will be addressed in a subsequent decision." (D.01-09-060, p. 10 [Conclusion of Law 4] & p. 13 [Ordering Paragraph 9].)

In D.01-09-060, we recognized that merely suspending direct access was not enough. Many issues remained.

> "All other pending issues concerning direct access contracts or agreements executed before today remain under consideration by the Commission and will be resolved in a subsequent decision. In other words, effective today, no new contracts or agreements for direct access service may be signed; the effect to be given to contracts executed or agreements entered into before the

> effective date of this order, including renewals of such contracts or agreements, will be addressed in a subsequent decision. We put all those concerned about these matters on notice that we may modify this order to include the suspension of all direct access contracts executed or agreements entered into on or after July 1, 2001. Parties' comments regarding retroactive suspension, including the July 1, 2001 date, will be addressed by a subsequent decision. (D.01-09-060, pp 8-9.)

In D.01-10-036, our order denying rehearing, we modified D.01-09-060 for purposes of clarification and added the following language:

> "D.01-09-060 is modified to add the following clarifying language between lines 11 and 12 on page 8 of D.01-09-060:
>
> "We are aware that some parties have asked for us to hold hearings on the timing of the suspension of direct access. We have carefully reviewed the comments filed by various parties on this point and are not convinced that any party has identified any material factual issue that requires an evidentiary hearing. Thus, we do not intend to hold evidentiary hearings, especially as we are simply implementing a clearly worded statute that directs the Commission to suspend direct access. Further, we see no need to hold evidentiary hearings at this time, especially in the light of the important need to implement the Legislature's directives to suspend direct access, under the circumstances described above, and in the manner we did in today's interim order." (D.01-10-036, pp. 23-24.)

Further, we said that no "party has identified any material factual issue that requires an evidentiary hearing. Thus, we do not intend to hold evidentiary

hearings, especially as we are simply implementing a clearly worded statute that directs the Commission to suspend direct access . . . ." (D.01-10-036, pp. 23-24.) Following our directive the Presiding Administrative Law Judge (ALJ) set a prehearing conference on November 7, 2001, "to clarify the issues remaining to be resolved. . . ." (ALJ Ruling of October 11, 2001.) On October 23, 2001, an Assigned Commissioner's Ruling was issued by Commissioner Wood requesting written comments on various issues, including whether the Commission should consider a July 1, 2001, suspension date. At the prehearing conference of November 7, these matters were considered with particular emphasis on the issue of suspending direct access on a date prior to September 20, 2001.

On November 11, 2001, the Presiding ALJ issued a Ruling stating that:

> "Proposals to implement the Commission's September 20 Order (D.01-09-060) will be filed by the utilities on November 16, 2001; all parties may comment on or before November 28; all parties may respond to comments on or before December 4.
>
> "A prehearing conference to consider the implementation proposals, and issues regarding PX credits, will be held December 12, 2001 at 2 p.m. in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California."

On November 19, 2001, an Assigned Commissioner's Ruling stated that parties could file supplemental comments on January 4, 2002, to the comments filed in response to the Assigned Commissioner's Ruling of October 23, 2001.

At the prehearing conference on December 12, 2001, the matter of implementation of the order suspending direct access was submitted, subject to supplemental comments to be filed on January 4, 2002. (Tr. p. 133.)

> "The issues of implementation of the Commission's order suspending Direct Access (Decision 01-09-060) and whether to choose a date earlier than September 20, 2001 for the suspension to go into effect are submitted as of January 4, 2002, the date for filing supplemental comments."

Comments having been received, and argument at the prehearing conference considered, the matter of the suspension of direct access is ripe for decision.[2]

II. The Effective Date of Suspension

For the reasons set forth below, we find that the direct access suspension date should remain September 20, 2001. Direct access contracts executed prior to September 20, 2001, are not suspended, but are subject to the implementation restrictions imposed by this decision.

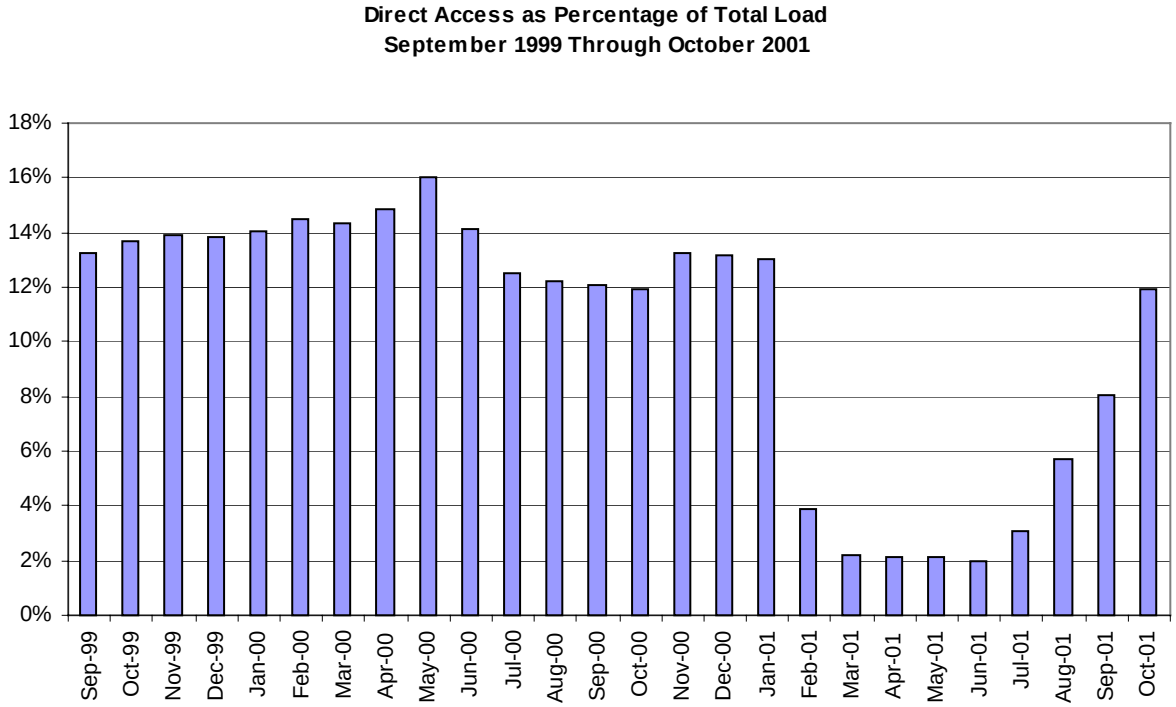
A. Facts

The Department of Water Resources has been buying electricity for the retail end use customers of the California utilities (Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E) since January 17, 2001, and San Diego Gas & Electric Company (SDG&E) since February 7, 2001. It has spent over $10 billion to date and is estimated to spend an additional $8 billion through December 31, 2002. DWR has entered into long-term contracts with various generators to supply electricity to the customers of the three

[2] On January 9, 2002, this Rulemaking was issued to separate the issue of suspension of direct access, which was being considered in A.98-07-003, A.98-07-006, and A.98-07-026, from all other issues in those three dockets. Rather than have the parties re-submit in this docket their filings in those three dockets we took official notice of the pertinent information. (Rulemaking p.6.)

utilities. All DWR purchases to date, including interest, plus the cost of future purchases under

TABLE 1



the long-term contracts and on the spot market, are the obligations of the ratepayers of the three utilities.[3]

Between July 1, 2001 and September 20, 2001, approximately 11% of the total electric load of the utilities has shifted from bundled service to direct access service. As Table 1 shows, by comparison, between September 1999 and January 2001, direct access levels hovered between 12% and 16% of total electric load before dropping to about 2% by June 2001. Thus, by September 2001, direct

[3] Water Code § 80104:

> Upon the delivery of power to them, the retail end use customers shall be deemed to have purchased that power from the department. Payment for any sale shall be a direct obligation of the retail end use customer to the department.

access service was still slightly below earlier levels. Nevertheless, this shift means that some percentage of the DWR revenue requirement will become the obligation of the remaining bundled customers of the utilities should direct access suspension remain fixed at September 20, unless the Commission implements exit fees or other charges on direct access customers that allocate certain DWR costs to them. This cost-shift potential is the major argument TURN, SCE and others make in calling for a retroactive suspension date.

The California DWR has been purchasing power for the electric customers of California investor-owned utilities since January 17, 2001 and will continue to purchase power for the foreseeable future. On November 5, 2001, DWR submitted to the Commission its most recent revenue requirement of $10,003,461,000, [4] representing the total to be collected from utility customers of the three major California utilities covering the period January 17, 2001 through December 31, 2002. In D.02-02-_____ we held that DWR will collect its revenue requirement through charges remitted from billings to retail customers of the three major electric utilities based on cents per-kWh charges.

The importance of the DWR decision to the instant proceeding is that the Commission has determined, as required by law, that all of DWR revenue requirement will be collected through rates. The direct access suspension date has no bearing on whether DWR will receive all of its revenue requirement. Therefore, the question becomes solely which ratepayers will pay these costs: current bundled ratepayers under the current system, a larger group

[4] Water Code § 80110 authorizes DWR to determine its revenue requirement. This Commission makes no independent judgment concerning the reasonableness of the DWR revenue requirement.

of bundled customers if a retroactive direct access suspension is adopted, or current bundled customers plus most direct access customers if exit fees or similar charges are imposed.

There is a record concerning the general concept of exit fees in this docket. On December 10, 2001 a "Motion of the California Manufacturers & Technology Association, California Large Energy Consumers Association, for Leave to File a Supplemental Proposal" (CMTA / CLECA Proposal) was filed. The CMTA / CLECA proposal is that the Commission should grandfather those customers (or their accounts) who had signed direct access contracts as of September 20, 2001 and whose names appear on the UDC's direct access DASR lists of October 5. The CMTA / CLECA proposal also states that "in the absence of retroactive suspension, the issue of responsibility of direct access customers for payment of utility and DWR procurement costs must be addressed promptly and fully." We agree that the Commission should consider the questions of direct access timing issues and exit fees in an integrated manner.

ORA argues that backbilling customers for DWR costs (e.g., exit fees) may be an effective way for the Commission to mitigate the cost-shifting that would otherwise occur. ORA provides some guidance concerning how an equitable exit fee would be calculated, with an assumption that otherwise about $700 million of DWR costs could be shifted to bundled customers (based on a 10% revenue in total IOU load going to direct access between July 1 and September 20, 2001). PG&E and others agree that a reasonable non-bypassable charge is the least intrusive way to deal with the cost-shifting that would occur if direct access customers are not returned to bundled service.

On December 24, 2001 the question of cost responsibility of direct access customers for DWR revenue requirements (e.g., exit fees) was transferred

from this docket to the Rate Stabilization docket. A Prehearing Conference on this topic is scheduled for February 22, 2002. We will determine the level of exit fees to be imposed in that proceeding. At this time we will state that exit fees or similar charges should be imposed,[5] and it is our intent that such fees or charges be fully compensable so that bundled customers pay no more DWR costs than if direct access had been suspended on July 1, 2001.

B. Arguments Against Changing the September 20, 2001 Suspension Date

ORA, AReM, CIU, CMTA / CLECA, and others argue against changing the suspension date of direct access from September 20, 2001, to July 1, 2001. The arguments fall into two broad categories: 1) customers have executed contracts with ESPs in reliance on our September 20 date, and 2) changing the suspension date to July 1, 2001 is an impairment of contracts entered into between July 1 and September 20. These and other policy arguments are discussed below.

1. Reliance

AReM, CMTA / CLECA, ORA, and others argue that because the Commission never acted formally to suspend direct access until September 20, 2001, the Commission allowed the direct access program to remain effective and, accordingly, customers continued to execute direct access contracts up until September 20, 2001. Thus, those customers that executed direct access contracts during this period were doing exactly what the Commission allowed them to do.

[5] In A.98-07-003, et. al., the Commission will also determine whether direct access customers who did not take bundled service between January 17, 2001 and September 20, 2001 may be exempt from exit fees.

As a matter of public policy, they believe it is critical that the Commission adhere to a stable set of rules which affect customers, ESPs, and the utilities. They claim it would be extremely disruptive at this juncture for the Commission to attempt to establish a direct access suspension date earlier than September 20, 2001. Customers have bargained for their direct access contracts and if those contracts were to be nullified by establishing an earlier suspension date, customers would lose the benefit of their bargain, primarily in the form of lower electric costs. Moreover, in many cases an earlier suspension date would cause customers to incur substantial contract termination costs. Even in those instances where so-called "regulatory out" clauses exist, CMTA argues, customers nevertheless would be harmed by virtue of having to pay higher electric costs by returning to bundled utility service. An abrupt and possible retroactive increase in costs for many business customers would be extremely harmful to their business operations and overall viability.

CMTA's argument is persuasive. The right to acquire direct access is a legislative and regulatory right. It was established in AB 1890 (Pub. Util. Code § 365(b)(1)) and was implemented through Commission decisions (*e.g.*, D.97-10-087, 76 CPUC 2d 294) and utility tariffs (Rule 22). As CMTA/CLECA points out, the Commission has an obligation to employ regulatory consistency in its decisions. Consumers, regulated utilities and the economy as a whole benefit when the Commission maintains a regular and consistent regulatory program, as this provides the predictability necessary to plan investment and budgetary decisions. Direct access has existed in concept since 1995 and in practice since 1998. The suspension date of September 20, 2001 was adopted on a forward-going basis, allowing predictability for the future. The continuing uncertainty surrounding a legally-dubious retroactive suspension should be

resolved at this time. Regulatory consistency clearly calls for keeping our previous decision intact.

2. Impairment of Contracts

We remain unconvinced that the constitutional restriction against impairment of contracts has no bearing here. If the Contract Clause lacks the robustness it exhibited prior to the enactment of the 14th Amendment, it is nonetheless not a dead letter. Even in the exercise of otherwise legitimate police power, the Contract Clause imposes *some* limits upon the power of the State to abrogate existing contracts. "[T]hat power has limits when its exercise effects substantial modifications of private contracts." *Allied Structural Steel Co v. Spannaus*, 438 U.S. 234, 244 (1978).

The existence and nature of those limits are denoted by a series of United States Supreme Court cases. In *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), a New Jersey law that altered the rights and remedies of Port Authority bondholders was held invalid under the Contract Clause because it was neither necessary nor reasonable. "Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." *Id.*, at 22. While scrutinizing a contract to which the State itself was party, the Court was careful to add that "private contracts are not subject to unlimited modification under the police power." *Id.*

In *Allied Structural Steel Co v. Spannaus*, 438 U.S. 234, the Court held invalid under the Contract Clause a Minnesota law that retroactively modified a pension vesting requirement. There was no record showing that such a severe impairment was necessary to meet an important general social problem. *Id.*, at

247. A severe impairment, the Court explained, "push[ed] the inquiry to a careful examination of the nature and purpose of state legislation." *Id.*, at 245.

By the same token, a state must possess broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result. Otherwise, one would be able to obtain immunity from state regulation by making private contractual arrangements. This principle is summarized in Mr. Justice Holmes' well-known dictum: "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them." Hudson Water Co. v. McCarter, 209 U.S. 349, 357 (1908).

Yet private contracts are not subject to unlimited modification under the police power. Home Bldg. & Loan Ass'n. v Blaisdell. 290 U.S. 398 (1934) recognized that laws intended to regulate existing contractual relationships must serve a legitimate public purpose. A State could not "adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them." Id. at 439. Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption. Id at 445-447. As is customary in reviewing economic and social regulation, however, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure. East New York Savings Bank v. Hahn, 326 U.S. 230 (1945).

Here, the retroactive suspension of the direct access contracts between private parties is neither temporary nor narrow in scope. While it is clear that the enabling legislation under which the Commission seeks to proceed came out of an undeniable emergency, it is also true that no reasonable inference that the Legislature wanted retroactive application of the powers it conferred on

the Commission is readily apparent from the language of AB 1X or from its legislative history. Rendering private contracts void retrospectively is, by its nature, a drastic and severe undertaking that, as a matter of administrative prudence and sound public policy, should not be undertaken lightly. Similarly, when other less stringent options are available, retrospective voiding of private contracts should be undertaken with extreme reluctance. In a situation where exit fees are a viable option for sharing the burden among all affected while at the same time less drastically affecting private contracts, such a vehicle seems eminently appropriate.

3. Other Policy Arguments

ORA, CMTA/CLECA, AReM and others raise other policy arguments against retroactive suspension of direct access. ORA's argument that exit fees provide a legally simpler and more equitable solution to the DWR charge allocation problem is discussed above. AReM and others raise the issue that retroactive suspension will negatively impact California companies. Two types of companies would be impacted: ESPs and direct access customers. The former would potentially be wiped out due to the loss of the bulk of their contracts. AReM and UC/CSU note that some of these ESPs provide green power options not offered by the utilities, as well as other service options. The latter would have their energy costs increase, at times dramatically. As UC/CSU and LAUSD point out, such increased costs also impact important state functions, such as the delivery of quality education. Further, by increasing energy costs and simultaneously calling into question the Commission's commitment to ensuring the sanctity of contracts (irrespective of the legality of retroactive suspension of direct access), California's economy may suffer harm from firms relocating out of state or choosing not to enter the state. For all of

these reasons, as well as those mentioned above, we find the State of California is better served by maintaining the September 20, 2001 direct access suspension date and determining exit fees or similar charges to recover DWR costs from direct access customers.

Further, virtually eliminating direct access at this time, as retroactive suspension would do, would limit the Commission's options for electric industry market structure in the future. For example, in our Procurement OIR (R.01-10-024) we are considering options ranging from fully integrated utility service to utility contracts with generators to a core/non-core model analogous to that in the natural gas industry. Direct access retroactive suspension would likely reduce our options by eviscerating the players and the infrastructure currently in place for direct access, thereby making options such as a core/non-core market structure more difficult to implement. We do not wish to effectively foreclose such options at this time.

ORA points out that retroactive suspension of direct access to July 1 could well have long term detrimental consequences to existing bundled ratepayers if, for example, spot market prices spike in the summer of 2002 and this 'new' returning loud to bundled service incrementally involves the average for bundled ratepayers. Further, ORA states "direct access is a means of diversifying the California electric power market, and therefore helps to protect California against uncertainty." Further CMTA/CLECA notes that the growth of direct access lead in summer 2001 contributed substantially to be $2.6 billion reduction in the level of the DWR revenue requirement estimate for the period through December 31, 2002. We agree with ORA and CMTA/CLECA that there are significant risks associated with retroactive suspension, and benefits associated with retaining a viable direct access market.

III. Implementation of the Suspension of Direct Access

In D.01-09-060 we said:

> "Accordingly, we issue this interim order in which we suspend the right to enter into new contracts or agreements for direct access effective today. This decision prohibits the execution of any new contracts for direct access service, or the entering into, or verification of, any new arrangements for direct access service pursuant to Public Utilities Code Sections 366 or 366.5, after the effective date of this order.[1]. . .
>
> "We direct the utilities not to accept any direct access service requests (DASRs) for any contracts executed or agreements entered into after the effective date of this decision. Steps that the utilities might take to ensure compliance with this order may include obtaining from each energy service provider a list of relevant identifying information for those customers that have entered into timely contracts, but for whom DASRs have not been submitted."

> "[1] All references in this order regarding the "suspension of the right to acquire direct access service" include the execution of any new contracts, agreements and arrangements for direct access service, or the verification of such contracts, agreements or arrangements pursuant to Public Utilities Code Sections 366 or 366.5."
> (D.01-09-060 at pp. 8-9.)

And we emphasized in Ordering Paragraph 8:

> "8. Within 14 days of the effective date of this order, PG&E, SDG&E and SCE, by letter, shall inform the Director of the Energy Division of the steps they have taken to ensure that no direct access service requests are accepted for any contracts executed or agreements

> entered into after September 20, 2001." (D/01-09-060 at p. 12.)

In D.01-09-060, we recognized that our order to suspend direct access was not self-executing and would have to be implemented by procedures to be developed by the utilities. On November 7, 2001, at a prehearing conference called to discuss implementation, the presiding ALJ requested the utilities to propose implementation measures. Their joint proposal was filed November 16, 2001, comments on the proposal were filed November 28, 2001,[6] and reply comments were filed December 4, 2001.

The method by which a UDC is notified that one of its customers desires to be served by an ESP or desires to return to UDC bundled service is when the ESP (usually) or the customer (rarely) files a DASR with the serving utility. Similarly, a DASR is required to inform the utility that a contract has been assigned, or renegotiated, or terminated or extended, or has had additional locations incorporated. Merely suspending direct access on a date certain does not, by itself, notify interested parties how their contracts will be affected.

As mentioned above CMTA/CLECA proposed that the Commission grandfather those customers or their accounts who had signed direct access contracts as of September 20, 2001 and whose names appear on the UDC's direct access DASR lists of October 5. Sempra Energy Solutions supports this proposal as administratively simple, consistent with rules and tariffs in place September

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[6] Comments from the following parties were filed: Alliance for Retail Energy Markets (AReM), Target Corporation, Laguna Irrigation District and ACWA-USA (LID), the University of California and California State University (UC/CSU), CMTA, Sempra Energy Solutions, City of Cerritos, and PowerSource.

20, 2001, and legally defensible. PG&E argues against one aspect of the proposal stating that direct access customers should not be allowed to enter into new contracts without restriction, as this would be a complete reversal of the direct access suspension in D.01-09-060. Similarly, SCE argues that customers should not be allowed to switch to a new ESP or have their contracts assigned to new ESPs.

Generally, we favor a balanced approach which allows existing direct access customers to continue in the direct access market, but limits additional load moving to direct access to load changes associated with normal usage variations on direct access accounts in effect as of September 20, 2001. This standstill concept is consistent with the provisions of ABIX and D.01-09-060 that direct access be suspended and there be no new arrangements. We note that exit fees or costs to bundled customers would increase if a standstill approach is not adopted, but instead unlimited expansion of load is permitted. While conceptually similar to the CMTA/CLECA proposal, we must spell out the provisions of the standstill concept in specific detail.

Under the standstill approach as described below, certain contractual rights are given effect while others are not. For example, the right to assign or renew a contract is preserved, but not the right to add new load. Such an approach provides an appropriate balance between, on the one hand, the need to protect bundled customers from excessive responsibility for DWR costs and, on the other hand, the need to ensure Constitutional fidelity, provide regulatory consistency and protect the state's interests in retaining a direct access market. By only limiting certain contractual rights prospectively, we take the least intrusive path necessary to balance these important public policy objectives.

The utilities shall implement the suspension as set forth below.

1. ESPs shall have provided by October 5, 2001 a list of names of all customers with direct access contracts in place as of September 20, 2001.

At the October 2, 2001 workshop, ESPs (including several AReM members) agreed that the October 5 date was reasonable for ESPs to submit names of eligible direct access customers, but that a longer period, until November 1, would be necessary to submit account specific details. Establishing a list of eligible customers within a reasonable time was suggested as an implementation step by the Commission in D.01-09-060. The October 5 date is fair – it is based on what ESPs said they could meet, and each utility notified ESPs in advance in writing that failure to submit names as of the deadline would lead to later DASR rejection. The October 5 date does not require that the utility processed the DASR by that date.

AReM proposes that an independent third party, such as a CPA, would submit a DASR verification to the UDC only for customers who were not on the October 5th list (but had a valid direct access contract) and for additional sites for customers already on the list. In turn, the UDC would be required, upon receipt of this verification, to process the associated DASR without delay in accordance with the standard procedures. A UDC would have no ability to delay the processing of a verified DASR.

In the UDCs' view it is simply not credible that any ESP's systems and records are so inadequate that a complete list of those customers who contracted for service prior to September 20, 2001 could not be provided in a timely manner. However, human error is possible. We will allow additions to the October 5th list for customers with a valid direct access contract as of September 20, 2001 (but not for additional meters, accounts or sites), using the AreM process, along with an

affidavit signed by both the ESP and the customer stating under penalty of perjury that the contract date is correct.

2. To submit an ESP list, or to submit DASRs for its accounts, an ESP must (1) have in effect a valid ESP/UDC service agreement as of September 20, 2001, and (2) ESPs serving small customers must have in effect as of September 20, 2001 valid Commission registration as required by law.

The need for valid service agreements and registration is not disputed.

3. Master agreements between ESPs and certain entities (other than the customers or end users of record) whose terms and conditions allow specific customers to elect direct access in the future (through execution of individual implementing agreements with customers), entered into on or before September 20, 2001 do not qualify as agreements for direct access service with end use customers.

LID/ACWA object strenuously to this rule. LID/ACWA argues for the eligibility of a master agreement executed September 5, 2001 between LID and ACWA-USA (an association of water agencies), under which ACWA-USA members can elect direct access service with LID acting as the ESP. Each member must execute a further participation agreement before taking service under the terms of the master agreement.

Water Code § 80110 provides that "the right of retail end use customers . . . shall be suspended. . . ." The utilities argue that master agreements between ESPs and associations to provide service at the election of member retail end users do not meet the requirements of the statute since such agreements are not with the retail end users. We agree. A master agreement with an association is nothing more than a proposal to provide service to retail end users and is not a

valid contract with any end user until the proposal is presented to the end user, and the end user accepts the offer by signing a participation agreement (required under the master agreement.) Any election by a member of an association to acquire direct access service under the master agreement after September 20, 2001, is therefore prohibited.

4. Customers and accounts are allowed to switch from one ESP to another after September 20, 2001.

According to AReM allowing customers unlimited switching between ESPs is consistent with AB1X since it doesn't increase direct access load. We agree with AreM. Changing ESPs would not be inappropriate under the standstill policy because no change in direct access load would occur, thus there would be no impact on cost-shifting of DWR costs. While changing ESPs does require a new contract (absent assignment), prohibited by D.01-09-060 (Ordering Paragraph 7), an exception is appropriate for the reasons stated above. ABIX can be read to allow ESP switches, and thus this exception, because it requires the suspension of the right to "acquire" direct access. A switch of ESPs is not an acquisition of direct access, but a continuation on direct access for the customer. See Water Code §80110.

5. No customer is allowed to add a new location to its direct access service after September 20, 2001.

Consistent with the principle of attaining a standstill of direct access service, adding new locations (and thus new load) to direct access service should be prohibited because it would likely result in more DWR cost responsibility for bundled customers. As discussed above, even if new locations are permitted under a direct access contact, a prospective suspension is reasonable and appropriate to balance important regulatory goals.

6. **No customer is allowed to add a new or additional account to direct access service if that account involves installation of additional meters after September 20, 2001 or would require a new DASR to be submitted after September 20, 2001.**

Again, new or additional accounts or meters would violate the standstill principle by adding new load, and a prospective suspension is appropriate. In D.01-10-036, the Commission reaffirmed "unless the Commission states otherwise in a subsequent decision" that utilities must process DASRs relating to pre-September 20, 2001 direct access contracts or agreements. Rules 5 and 6 constitute such statement. However, new DASRs shall be processed by the utilities if necessary to implement another provision herein (e.g., assignment, new customer name).

7. **Direct access residential and small commercial customers may move from one address to another within the UDC service area and continue to be served by the ESP serving them prior to the move.**

No party objects to this condition.

8. **Direct access contracts may be assigned after September 20, 2001, to either a new ESP, or to a new retail end use customer representing approximately the same load at the same location.**

The direct access contracts which we have reviewed have clauses which permit assignment to another ESP or to another retail end use customer. AReM, and others, argue that if the contract permits assignment it must be honored even if the assignment takes place after the suspension date. We will allow assignment of contracts if permitted by the customer-ESP contract because this is consistent

with the standstill principle and does not increase direct access load. Ordering Paragraph 7 of D.01-09-060 states:

> "PG&E, SCE, and SDG&E shall not accept any direct access service requests for any contracts executed or agreements entered into after September 20, 2001." (D.01-09-060 at p. 12.).

However, as noted above, D.01-10-036 required new DASRs to be processed by the utilities.

Unlike a customer switching from one ESP to another, assignment of a customer from one ESP to another involves a continuation of an existing contract, not a new arrangement or agreement. Therefore, assignment is permitted as allowed by customer-ESP contracts. However, we have already stated that no new locations or additional meters may be added; switching ESPs or customers on a contract does not provide an exception to this provision. Assignment to a new customer is limited to the same load at the same location.

9. A customer who had direct access prior to September 20, 2001, but who became a bundled customer cannot return to direct access after September 20, 2001.

This would require a new contract after September 20, 2001, which is prohibited by D.01-09-060. No exception is warranted here.

10. A direct access customer can change its identity (i.e., Jones Company to Acme Electronics) provided no other implementation restriction applies.

A change in identity, such as a change in ownership or corporate reorganization, is permitted subject to the other restrictions delineated herein.

For example, a change in identity may not be used to increase load or locations served.

11. Community Choice Aggregation Programs

Community aggregators shall serve only direct access customers who chose community aggregation prior to September 20, 2001.

Under the Public Utilities Code Section 366(b), community aggregation programs require an "opt-in" by the interested customers. The UDCs believe that the act of opting in after the suspension date constitutes a new arrangement for direct access service prohibited by D.01-09-060, and propose that customers who attempt to opt into a community aggregation program after the suspension date be rejected.

Community aggregators such as the Cities of Cerritos and San Marcos claim that because they had an existing community aggregation program prior to the suspension date, customers should be able to opt-in to direct access service even after the suspension date. Municipalities that are community aggregators assert that because the potential amount of load is small and because they have the legal authority to provide electric service to their inhabitants, they should have the right to switch their inhabitants to direct access after the suspension date.

We disagree. A customer who requests direct access service after September 20, is seeking a new arrangement prohibited by D.01-09-060. Whether the request is made to a community aggregator or directly to an ESP the result is the same: a shift of costs to the remaining bundled customers. The community aggregation program has been in effect since 1997. A community aggregator is

part of direct access and should not be permitted to acquire new customers after September 20.

12. Returns to Bundled Service and Backbilling

The rules above may require some customers to move from direct access service to bundled service, specifically:

a) customers or accounts not on an ESP direct access customers list as of October 5, 2001.

b) customers or accounts added to direct access service after September 20, 2001 based on contracts signed after that date.

c) customers or accounts added to a master agreement or community aggregation program after September 20, 2001.

(d) new locations, or loads involving installation of additional meters, added after September 20, 2001 under contracts in place as of September 20, 2001.

In these cases, the customer should not be backbilled by the utility for bundled service not taken by the customer.

IV. Comments on Draft Decision and Alternate

The Proposed Decision (PD) of ALJ Barnett was mailed on January 25, 2002. The Alternate Proposed Decision (APD) of Commissioner Geoffrey Brown was mailed on February 7, 2002. Comments on both the PD and APD were received on February 14, 2002. Comments were filed by Laguna Irrigation District, Powersource Corporation, Association of California Water Agencies, Cargill, Incorporated, Jack-In-The-Box,

UC / CSU, The Community College League of California, The Building Owners and Managers Association, Irvine Company, California Industrial Users, California Industrial Users, Leprino Foods Company, Callaway Golf company, Kroger Company, City of Cerritos, California Manufacturers & Technology Association, Agricultural Energy Consumers Association, Newark Group, Inc., AES New Energy, Inc., AReM and Western Power Trading Forum, California Independent Petroleum Association, Commonwealth Energy Corporation, ORA, City of San Marcos, California Retailers Association, Energy Producers and Users Coalition, SBC Services, Inc, County Sanitation Districts of Los Angeles County, Sempra Energy Solutions, PG&E, California Energy Commission, DWR, SDG&E, Lowe's Home Improvement Warehouse, City of Corona, City of Corona, Simpson Timber Company, Los Angeles Unified School District, 7-Eleven and Wal-Mart, Edison, Strategic Energy, L.L.C., and TURN.

We make certain changes in response to comments on the APD. Language inconsistent with the APD's Findings and Conclusions that was inadvertently left over from the PD is deleted. As ORA, PG&E and TURN point out, the APD must explicitly determine that a surcharge or exit fee will be adopted and levied on direct access customers in order to ensure an equitable outcome for all customers. We agree and will modify Conclusion of Law 3, as well as Findings of Fact 4 and 5 to say this. PG&E also suggests useful clarification language to Conclusion of Law 8 (now COL 11) and rules 5 and 6, as well as on backbilling. Per CMTA's suggestion, we add a new Conclusion of Law stating that customers who had signed a direct access contract as of September 20, 2001 may renew the contract when it expires, may enter a new contract with a different ESP for the same load, or may switch ESPs via assignment or other mechanism, and that new DASRs may be filed for these

purposes. We agree with Strategic Energy that some very limited exceptions to the October 5, 2001 ESP customer list should be allowed, if errors occurred.

SCE states its comments that "SCE interprets the (alternate's) directive that direct access load as of September 20, 2001, not increase to mean that only direct access customers receiving power from their ESP as of September 20, 2001, shall be allowed to remain on direct access service and that all direct access switches after September 20, 2001 – which would necessarily increase direct access load – are prohibited." (emphasis on original) SCE continues: "Therefore if the (alternate) is adopted, SCE will revert all direct access customer service accounts which were not receiving power from their ESPs as of September 20, 2001 back to bundled service." SCE misunderstood our intent. We have deleted conflicting language from the draft alternate decision. To be clear: utilities shall not return direct access customers to bundled service based upon when power flowed from an ESP to a customer, nor upon whether the utility processed a DASR by any particular date. As discussed herein, utilities must accept for direct access service and various service changes discussed herein any DASR based upon the ESPs October 5, 2001 customer list, and honor the exception process as discussed. We accept SCE's suggestions regarding certain clarifications of Ordering Paragraph.

To ensure clarity, we will emphasize here that all direct access customers with valid contracts signed on or before September 20, 2001 may remain direct access customers, regardless of whether they were receiving power from their ESP as of September 20, 2001 (subject to the other restrictions in this decision). Our intentions in ensuring that the level of direct access load not increase are based upon the level of load under contract as of September 20, 2001.

Other clarifications and deletions are made for consistency purposes.

Findings of Fact

1. DWR has submitted to us, pursuant to its authority under Water Code § 80110, a revenue requirement of $10.003 billion for the three major California utilities, covering the period January 2001 through December 2002.

2. DWR costs will be borne solely by bundled customers unless direct access customers are required to pay a portion of these costs.

3. Retroactive suspension of direct access, if lawful, would increase the pool of bundled customers who are subject to DWR costs.

4. Direct access customers will also be subject to DWR costs when exit fees or similar charges are imposed on these customers.

5. Exit fees and similar charges are a topic in A.00-11-038, et al., and specific fees or charges will be developed in that proceeding.

6. Direct access customers have relied upon the right to direct access until September 20, 2001 and have made budgetary, investment and other financial decisions on the basis of this contractual right.

7. Some or all direct access contracts include the right to assign and/or renew the contract, or to expand the load.

8. Increasing the load on direct access above the September 20, 2001 level would lead to either increased costs for bundled customers or higher exit fees for direct access customers.

9. Allowing a current direct access customer to choose a new ESPs, renew a contract with an ESP, or be assigned to a new ESP would not increase overall direct access load or result in cost-shifting.

10. Some community choice aggregation programs have signed up direct access customers before September 20, 2001 and some have not.

Conclusions of Law

1. Direct access contracts executed after September 20, 2001, are suspended until DWR no longer supplies power under ABIX, Stats. 2001 (1st Extraordinary Session), ch. 4 (Water Code §§ 80000 et seq.).

2. Direct access is a legislative and regulatory right, subject to the suspension provisions of ABIX.

3. The Commission should impose exit fees on direct access customers in A.00-11-038, et al. in order to spread DWR costs equitably among both bundled and direct access customers.

4. The Contract Clause may prohibit a retroactive suspension if an evident and more moderate course of action, such as exit fees, would achieve the goals of ABIX.

5. It is reasonable to interpret a September 20, 2001 date for suspension of direct access to mean the level of direct access load as of that date (irrespective of whether power had yet flowed under any direct access contract) should not be allowed to increase, apart from normal load fluctuations.

6. The implementation provisions we set forth in this decision are reasonable, consistent with our action in suspending direct access as of September 20, 2001.

7. A standstill approach which gives effect to certain contractual rights (e.g., renewal, assignment) but not others (e.g., new load) on a prospective basis provides an appropriate balance between, on the one hand, protecting bundled customers from excessive responsibility for DWR costs and, on the other hand, the need to ensure Constitutional fidelity, provide regulatory consistency and protect the state's interests in retaining a viable direct access market.

8. D.01-09-060 should be clarified so that new contracts would be allowed if a direct access customer switches ESPs.

9. Assignment or renewal of a direct access contract, if allowed by the contract, should be allowed and does not constitute a new contract or arrangement.

10. Customers who had signed a direct access contract as of September 20, 2001 may renew the contract, enter into a new contract with a different ESP for the same load, or may switch ESPs via assignment or other permissible mechanism. The filing of new DASRs to implement such changes is permissible.

11. For a direct access customer as of September 20, 2001, addition of any new or additional account that involves additional meters to be installed after that date or would require a new DASR after September 20, 2001 constitute a new arrangement and should not be allowed pursuant to the September 20, 2001 suspension date.

12. Community choice aggregation programs should not be allowed to serve direct access customers who signed up after September 20, 2001, as this would constitute a new contract or arrangement.

13. This decision is made effective today to allow the suspension provisions to be implemented expeditiously. Thus, it is reasonable to reduce the period for comment and review of the draft decision, pursuant to Rule 77.7(f)(9).

O R D E R

IT IS ORDERED that:

1. This order shall apply to Southern California Edison Company (SCE). Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E).

2. The execution of any new contracts, or the entering into, or the verification of any new arrangements for direct access service pursuant to Public Utilities Code Sections 366 or 366.5, after September 20, 2001, is prohibited, unless specifically allowed on this decision.

3. Exit fees or similar charges to direct access customers shall be developed in A.00-11-038, et. al. that are fully compensable to bundled customers so that bundled customers pay no more DWR costs than if direct access had been suspended as of July 1, 2001.

4. SCE, PG&E, and SDG&E shall implement the conditions set forth in this decision which affect those direct access contracts not suspended.

5. SCE, PG&E, and SDG&E shall not accept any direct access service requests for any contracts executed or agreements entered into after September 20, 2001, unless specifically allowed by this decision.

6. If not already done, SCE, PG&E, and SDG&E shall notify their customers that the right of retail end users to acquire direct access service is suspended effective September 20, 2001.

7. If not already done, SCE, PG&E, and SDG&E shall modify any information disseminated to customers that describes direct access service, subject to review by the Public Advisor's office and Energy Division, to explain that the right to acquire direct access service has been suspended.

8. The highlighted sections under "Implementation of the Suspension of Direct Access" are adopted.

9. Within 14 days of the effective date of this order, SCE, PG&E, and SDG&E by letter, shall inform the Director of the Energy Division of the steps they have taken to ensure that no direct access service requests are accepted for any contracts executed or agreements entered into after September 20, 2001.

10. SCE, PG&E, and SDG&E shall within 90 days after the effective date of this order, return any direct access customers not in conformity with this order to bundled service.

11. This Rulemaking is closed.

This order is effective today.

Dated _____, at San Francisco, California.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Alternate Draft Decision of Commissioner Brown on all parties of record in this proceeding or their attorneys of record.

Dated February 7, 2002, at San Francisco, California.

s/s Nellie Abrena
Nellie Abrena

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

DRAFT

Appendix A

Table 1

DWR Revenue Requirement

For the Period January 17, 2001 through December 31, 2002

($000s)

Quarter	Retail Sales (GWhs)	A&G	Other	DSM	Contract Power	Residual Net Short	Ancillary Services	Total Commitments	(Lag) Lead Accrual to Cash	Total Operating Expenditures	Financing Cost	Total Expenditures	Revenue Lead (Lag)	Spot Sales Revenue	Estimated Quarterly Fund Balance	Total DWR Revenues Needed	Net Borrowed Proceeds	Customer Revenue Requirement
		A	B	C	D	E	F	G (Sum of A thru F)	H	I (= G + H)	J	K (= I + J)	L	M	N	O (=K – L – M + N)	P	Q (=O – P)
Q1, 2001	12,360	7,848	-	-	-	3,581,465	367,847	3,957,160	(1,619,382)	2,337,778	-	2,337,778	(544,097)	-	293,176	3,175,051	2,400,000	775,051
Q2, 2001	19,620	10,162	-	482	627,601	3,884,229	419,215	4,941,690	6,302	4,947,991	-	4,947,991	(1,030,866)	-	4,239,624	9,925,305	7,908,729	2,016,576
Q3, 2001	16,054	11,346	3,734	226,446	888,404	1,135,727	57,667	2,323,324	(55,479)	2,267,845	(10,481)	2,257,364	(329,133)	-	3,182,822	1,529,696	(116,300)	1,645,996
Q4, 2001	10,365	8,998	4,008	61,968	670,470	248,590	43,889	1,037,923	550,427	1,588,350	-	1,588,350	223,483	20,884	2,963,069	1,124,230	-	1,124,230
Q1, 2002	9,313	15,104	3,667	-	652,644	169,756	51,551	892,722	1,543,844	2,436,567	(45,976)	2,390,591	879,565	24,819	2,499,879	1,023,017	-	1,023,017
Q2, 2002	7,957	15,104	3,211	-	665,651	129,830	42,678	856,474	(19,771)	836,703	471,932	1,308,635	20,355	39,279	2,128,890	878,012	-	878,012
Q3, 2002	12,312	15,104	4,895	-	946,735	220,184	64,080	1,250,998	(25,251)	1,225,748	400,807	1,626,555	(257,440)	45,879	1,643,471	1,352,697	-	1,352,697
Q4, 2002	10,812	15,104	4,249	-	832,758	164,417	54,752	1,071,280	20,493	1,091,773	464,959	1,556,732	194,995	26,043	1,495,658	1,187,882	-	1,187,882
Total	98,793	98,771	23,764	288,896	5,284,264	9,534,199	1,101,678	16,331,571	401,184	16,732,755	1,281,242	18,013,997	(843,139)	156,903		20,195,890	10,192,429	10,003,461

Notes

1. **Total Commitments** equals sum of **A&G**, **Other (Uncollectables)**, **DSM**, **Contract Power**, **Residual Net Short**, and **Ancillary Services**
2. **Total Operating Expenditures** equals **Total Commitments** plus **(Lag) Lead Accrual to Cash**
3. **Total Expenditures** equals **Total Operating Expenditures** plus **Financing Cost**
4. **Total DWR Revenues Needed** equals **Total Expenditures** minus **Revenue Lead (Lag)**, minus **Spot Sales Revenue**, plus **Estimated Quarterly Fund Balance**
5. **Customer Revenue Requirement** equals **Total DWR Revenues Needed** minus **Net Borrowed Proceeds**

(END OF APPENDIX A)

Appendix B
(Page 1)

Water Code Sections

80000. The Legislature hereby finds and declares all of the following:

(a) The furnishing of reliable reasonably priced electric service is essential for the safety, health, and well-being of the people of California. A number of factors have resulted in a rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, with statewide impact, to such a degree that it constitutes an immediate peril to the health, safety, life and property of the inhabitants of the state, and the public interest, welfare, convenience and necessity require the state to participate in markets for the purchase and sale of power and energy.

(b) In order for the department to adequately and expeditiously undertake and administer the critical responsibilities established in this division, it must be able to obtain, in a timely manner, additional and sufficient personnel with the requisite expertise and experience in energy marketing, energy scheduling, and accounting.

80002.5. It is the intent of the Legislature that power acquired by the department under this division shall be sold to all retail end use customers being served by electrical corporations, and may be sold, to the extent practicable, as determined by the department, to those local publicly owned electric utilities requesting such power. Power sold by the department to retail end use customers shall be allocated pro rata among all classes of customers to the extent practicable.

80104. Upon the delivery of power to them, the retail end use customers shall be deemed to have purchased that power from the department. Payment for any sale shall be a direct obligation of the retail end use customer to the department.

80108. The commission may issue rules regulating the enforcement of the agency function pursuant this division, including collection and payment to the department.

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80110. The department shall retain title to all power sold by it to the retail end use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate. Such revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of **Water** Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. For purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities **Code** shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities **Code**, as determined by the commission. In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division. After the passage of such period of time after the effective date of this section as shall be determined by the commission, the right of retail end use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities **Code** to acquire service from other providers shall be suspended until the department no longer supplies power hereunder. The department shall have the same rights with respect to the payment by retail end use customers for power sold by the department as do providers of power to such customers.

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80130. The department may incur indebtedness and issue bonds as evidence thereof, provided that bonds may not be issued in an amount the debt service on which, to the extent payable from the fund, is estimated by the department to exceed the amounts estimated to be available in the fund for their payment. The department may authorize the issuance of bonds (excluding notes issued in anticipation of the issuance of bonds and retired from the proceeds of those bonds) in an aggregate amount up to the greater of thirteen billion four hundred twenty-three million dollars ($13,423,000,000) or the amount calculated by multiplying by a factor of four the annual revenues generated by the California Procurement Adjustment, as determined by the commission pursuant to Section 360.5 of the Public Utilities **Code**; provided, such aggregate amount shall not exceed thirteen billion four hundred twenty-three million dollars ($13,423,000,000). Nothing in this section shall prohibit the department from issuing bonds prior to the effective date of this bill based upon the authorization granted to the department by the provisions of Chapter 4 of the Statutes of 2001-02 First Extraordinary Session. Refunding of bonds to obtain a lower interest rate shall not be included in the calculation of the aggregate amount. In addition, before the issuance of bonds in a public offering, the department shall establish a mechanism to ensure that the bonds will be sold at investment grade ratings and repaid on a timely basis from pledged revenues. This mechanism may include, but is not limited to, an agreement between the department and the commission as described in Section 80110.

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80134. (a) The department shall, and in any obligation entered into pursuant to this division may covenant to, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the fund, to provide all of the following:

(1) The amounts necessary to pay the principal of and premium, if any, and interest on all bonds as and when the same shall become due.

(2) The amounts necessary to pay for power purchased by it and to deliver it to purchasers, including the cost of electric power and transmission, scheduling, and other related expenses incurred by the department, or to make payments under any other contracts, agreements, or obligations entered into by it pursuant hereto, in the amounts and at the times the same shall become due.

(3) Reserves in such amount as may be determined by the department from time to time to be necessary or desirable.

(4) The pooled money investment rate on funds advanced for electric power purchases prior to the receipt of payment for those purchases by the purchasing entity.

(5) Repayment to the General Fund of appropriations made to the fund pursuant hereto or hereafter for purposes of this division, appropriations made to the Department of **Water** Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001.

(6) The administrative costs of the department incurred in administering this division.

(b) The department shall notify the commission of its revenue requirement pursuant to Section 80110.

(END OF APPENDIX B)

Appendix C

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(END OF APPENDIX C)